Sent to Representatives Smith, Turzai and Ellis on behalf of Kathryn Z. Klaber, President, Marcellus Shale Coalition and Stephanie Catarino Wissman, Executive Director, Associated Petroleum Industries of Pennsylvania--

January 12, 2012

The Honorable Sam Smith
139 Main Capitol Building
PO Box 202066
Harrisburg, PA 17120

The Honorable Mike Turzai
110 Main Capitol Building
PO Box 202028
Harrisburg, PA 17120

The Honorable Brian Ellis
157 East Wing
PO Box 202011
Harrisburg, PA 17120

Dear Representatives Smith, Turzai and Ellis:

We wish to commend you for your work thus far in advancing comprehensive shale development legislation. We are writing to encourage you to continue this effort in a manner that yields reasonable, predictable, and consistent statewide requirements and opportunities for the shale gas industry in Pennsylvania.

We are proud that our industry is making many positive contributions to the Commonwealth, by supporting more than 200,000 direct and ancillary jobs;

paying more than $1 billion in state and local taxes over the past five years; reducing utility bills by nearly $650 million in just one year alone; providing $1.6 billion of royalties and bonus fee income to local landowners in just one year, investing close to half a billion dollars in road repairs; and positioning the Commonwealth as a significant contributor to our nation's energy security.

These benefits alone are enough to make shale gas development the story of a generation. Yet we know that there is so much more that the Commonwealth and all of its citizens stand to gain from responsible shale gas development in the years ahead: more job growth, new and expanding manufacturing industries that rely on stable supplies of natural gas, and sustained community growth that comes with long-term investments by employers.

However, there are very real threats to this sustained growth. Current natural gas prices are at historically low levels and oil prices have remained relatively high, making the economics in predominantly dry gas plays like the Marcellus more challenging. Oil and wet gas shale plays are attracting development capital due to the price differential between natural gas and oil. This is a market dynamic that is largely out of our hands in the Commonwealth of Pennsylvania. But there are other factors that are very much in the control of our elected officials and need to be treated very carefully in this low-price environment. The clearest examples include increased production costs from new regulatory requirements and fees, as well as limitations to developing resources that result from a patchwork of new municipal limits.

During the Governor's Marcellus Shale Advisory Commission proceedings, environmental and conservation groups, local government organizations, state regulatory agencies, business leaders and the industry stood united in recommending a set of thoughtfully-crafted environmental and safety standards that raised the bar significantly from current law and regulation. These enhanced standards are not without cost. Exceeding them only will result in an overly-burdensome regulatory environment which will be factored in when investment decisions are made.

In order to continue the remarkable record of success that has benefitted Pennsylvanians throughout the Commonwealth, from landowners in Greene County to small business owners in Tioga County, to energy consumers in Delaware County, we respectfully urge you to continue to make the enactment of shale legislation that creates reasonable, predictable, and consistent requirements for the industry a priority in January for the General Assembly. We ask that you consider the following when deciding the substance of the final legislative product.

Impact Fee: The industry understands the need for a community-based local impact fee to offset the impacts to local government and the environment. The impacts should be considered in light of the many positive contributions that the

industry is making in the Commonwealth and the magnified impact of any increased costs in the current economic situation for natural gas producers. We prefer the impact fee that was passed by the House of Representatives last year and oppose the fee currently contained in the legislation.

Uniformity: Defining the relationship between local and state government powers and duties across the shale play is of great importance to the industry. Without a reasonable and uniform approach to oil and gas operations, we will never have a clear, consistent, and predictable environment in which to operate, and therefore the full potential of this resource will never be realized. We believe that the final legislative package must include strong uniformity language much like the concept originally put forth in the House bill. A uniform set of state standards is essential for ensuring consistent regulatory oversight because it provides a clear set of rules for compliance and the continued safe and responsible development of this resource.

Safety: Pennsylvania currently has some of the most stringent standards for oil and gas development in the nation. Many of the proposed changes contained in the House and Senate versions enhance these strong standards and emphasize Pennsylvania's commitment to its citizens' environmental future. The industry supports reasonable, fact-based standards. However, any and all increased requirements impact drilling like a regulatory tax and – similar to an impact fee – are part of the equation when calculating the best use of investment capital.

We offer several suggestions in the following pages to amend provisions in the House and Senate bills.

Thank you again for your commitment to advancing shale gas legislation as a driver of economic growth and job creation, environmental protection, and energy security in the Commonwealth.

Sincerely,

Kathryn Z. Klaber
President
Marcellus Shale Coalition

Stephanie Catarino Wissman
Executive Director
Associated Petroleum Industries of Pennsylvania

Enclosure
cc: Governor Tom Corbett
All House Members

Suggestions for Final Marcellus Shale Legislation

Impact Fee

The impact fee provision in the House-passed version (§3503 (unconventional gas well impact fee)) is preferential to the one found in the Senate-passed version (§2302 (shale impact fee)) in rate and structure. However, §3503 (c) provides for assessing all wells as day one producers including those drilled before enactment of a local ordinance instituting a fee. This will significantly and negatively impact the economics of the wells and should not be carried in the final document. The provision for wells drilled before January 1, 2011 in the Senate-passed version (§2502) is preferable and should be carried in the final document.

The provision in the Senate-passed version (§2302 (c) (shale impact fee)) which establishes an annual adjustment for the fee transforms the fee into a tax and should not be carried in the final document.

Noise Regulations

The provision in the House-passed version (§3215.1 (general restrictions)) requiring compressors within 2,500 feet of a dwelling to be housed in a soundproof building and not exceed 60 dBA immediately outside the building should not be carried in the final document. The provision may not be technologically feasible and would create a situation under which compressors under federal jurisdiction would be subject to different but technologically achievable standards than those under this state standard. The industry already invests several million dollars in sound suppression per compressor station and any additional requirements will come with a significant price tag.

Air Contaminant Emissions

The provision in the House-passed version (§3227 (air contaminant emissions)) requiring operators to inventory air contaminant emissions associated with oil and gas activities is unnecessary and should not be carried to the final document. The Department of Environmental Protection has current regulations requiring air emission inventory and reporting for a wide variety of sources, including those from the oil and gas industry. There is no scientific basis to create special rules for this industry alone.

Grandfathering Existing Wells & Pads

The provision in the Senate-passed version (§3215(e)) that limits the applicability of the well location restrictions in §3215 to new wells and well pads and does not apply to existing wells and well pads should be carried in the final document.

Atmospheric Discharge

The provision in the House-passed version (§3215.1(e) (general restrictions)) that addresses atmospheric discharges singles out the Marcellus industry and should not be carried in the final document. There are existing statutes and regulations that impact all air emission sources and are sufficiently protective.

Clarification of Setbacks

The provision in the House-passed version (§3215 (well location restrictions)) should be carried in the final document. However, §3215(b) needs to be changed to be consistent with §3215(a) by providing that setbacks from wells be measured from the vertical well bore.

Pre-Drilling Survey Obligations

The provision in the House-passed version (§3218 (protection of water supplies)) requiring operators to conduct free pre-drilling surveys for landowners whose water wells are located between 2,500 feet and 5,500 feet of a well should not be carried in the final document. The extension of the zone for presumption of liability is sufficiently protective. Each survey test costs a minimum of $1,000 plus manpower and resources expended. Therefore, the costs associated with complying with this mandate will be significant with virtually no benefit to be gained.

Definition of "gas"

The definition of "gas" in the House-passed version (§3203 (definitions)) that includes natural gas liquids, should be carried in the final document.

Well Completion Reports

The provision in the House-passed version (§3222(b)(4)(i) (well completion reports)) should be harmonized with recently promulgated provisions set forth in Pennsylvania's oil and gas regulations at 25 Pa. Code §78.122(b)(6) by requiring the stimulation record to include a descriptive list of the "chemical additives" in the stimulation fluid. This term should be used rather than "hazardous and other chemicals" as proposed.

Corrosion Control Requirements

The provision in the Senate-passed version (§3218.5 (corrosion control requirements)) outlining corrosion control requirements for pipelines, storage tanks and wells is unnecessary, very expensive and should not be carried in the final document. Corrosion standards for pipelines and tanks already exist, therefore additional standards are unnecessarily duplicative. Given Pennsylvania's geology, the necessity of corrosion protection for wells is questionable. A conservative estimate puts the cost at a $50,000 per well minimum which would exceed some first year impact fee proposals. The most reasonable alternative to this potentially costly and unnecessary provision would be to task the Department of Environmental Protection to conduct a study to determine whether corrosion standards should be applied to wells.

Well Permit Term

The provision in the House-passed and Senate-passed version (§3211(I) (well permits)) provides for permit expiration after one year. Given the increased obligations that are going to be imposed, the duration of a well permit should be extended from one to two years in the final document.

Water Supply Replacement

The obligation to supply an adequate replacement water supply should be limited to Safe Drinking Water Act Standards or predrilling (or alteration) water quality if the water did not meet Safe Drinking Water standards due to circumstances unrelated to natural gas activities. In those cases the operator should not be responsible for treatment or other actions necessary to address these pre-existing conditions. The final version (§3218) should be clear that the operator is not responsible for pre-existing conditions.

Defenses to the Rebuttable Presumption

The House-passed version contains an error (§3218(d)(2)) regarding defenses to the rebuttable presumption for impacting water supplies by unconventional wells. It does not include the defense that the pollution occurred as the result of some cause other than the drilling or alteration activity. The Senate version contains the defense. The Senate provision should be carried in the final document.

Recovery of Response Costs

If carried in the final document, the provision in the House-passed version (§3254.1 (Well control emergency response cost recovery)) that provides for recovery of emergency response costs lacks clarity and necessary limitations. The recovery of response costs should be limited to reasonable, necessary and appropriate costs, as is done in other environmental programs.

Chapter 78 Applicability

The provision in the House-passed version (§3274 (Regulatory authority)) that provides an exemption for conventional wells from the enhanced requirements in the Department of Environmental Protection's new Chapter 78 well regulations should not be carried in the final document. The Department's regulations distinguish between conventional and unconventional wells where appropriate.

Denial of Permit

The provision in the Senate-passed version (§3211 (well permits)), specifically (e.1)(5) presents significant concerns of lack of due process. Affording the Department of Environmental Protection the authority to make the determination that "the likely result of the violation is an unsafe operation or environmental damage" is cause for concern and opens the door for a definite lack of consistency.. The House-passed version provides the necessary due process protection which should be carried in the final document.

Well Location Restrictions

The provision in the Senate-passed version (§3215 (well location restrictions)) should be amended to allow for a waiver of the 1,000 foot from the owner of the public water supply. The language in the House-passed version should be carried in the final document.

The provision in the Senate-passed version (§3215 (well location restrictions)) contains arbitrary permit conditions based on potential impacts to public drinking water supplies and floodplains.

Additionally, the special restrictions on hazardous chemicals storage within 750 feet of a stream, spring or body of water lacks any scientific basis and should not be carried in the final document.

The provision in the Senate-passed version (§3215 (B) (well location restrictions)) is flawed in its reference to a cited "definition" for "public water supply source." In spite of its inclusion in this provision, no such definition exists. This oversight could trigger significant problems related to permit conditions in the Commonwealth, conceivably applying to nearly every acre of land in Pennsylvania. The language in the House-passed version addresses this problem by confining the setbacks to distances from withdrawal points from water supplies. The House-passed language should be carried into the final document.

The provision in the Senate-passed version (§3215 (C) (well location restrictions)) refers to water supplies and floodplains as a public resource and grants regulatory authority to the Department of Environmental Protection to condition or deny permits based on an undefined "impact." If adopted, this provision could potentially and largely nullify all defined provisions and protections regarding setbacks, as it allows for the imposition of conditions for no reason more specific than an "impact." This provision should not be carried into the final document.

Well Site Restoration

The extension provision in the Senate-passed version (§3216 (well site restoration)) does not provide for an extension for multiple well drilling on a pad. The language in the House-passed version should be carried in the final document.

Rebuttable Presumption

The provision in the Senate-passed version (§3218 (protection of water supplies)) establishes a 3,000 foot presumption of water contamination for unconventional wells. The Oil and Gas Act currently holds the industry to a 1,000 foot radius for presumed liability for water contamination. During the Governor's Marcellus Shale Advisory Commission, the industry joined environmental and conservation groups and local government organizations in recommending that the radius be increased to 2,500 feet which would make it consistent with every other environmental statute with such a provision. This significant jump would increase the area of presumed liability by a factor of 6.25. The Senate language arbitrarily increases it to 3,000 feet which increases the area by a factor of 9. This increase has no scientific basis and would result in a significant cost increase for industry.

Containment for Unconventional Wells

The provision in the Senate-passed version (§3218.1 (containment for unconventional wells)) establishes excessive and unnecessary standards that would increase the cost of drilling for no additional, scientifically-established benefit. This should not be carried in the final document.

Gathering Lines

The industry is supportive of mandatory One Call participation, but the definition in the Senate-passed version (§3218.6 (gathering lines)) should mirror that in federal pipeline safety laws and regulations.

Diverse Business Participation

No other industry is forced to comply with this employment mandate unless the business is actually a Commonwealth contractor. The provision in the Senate-passed version (§2316) should not be carried in the final document.

E&S Control Measure Inspections

A provision in the House-passed version (§3258 (inspection and production of materials, witnesses, depositions and rights of entry)) prohibits the commencement of drilling operations until the Department of Environmental Protection has conducted an inspection of erosion and sediment (E&S) control measures installed at the well site. Because of the uncertainties associated with department inspection schedules, the requirement could force operators to absorb significant expenses while rigs sit idle on the well pad waiting for the required inspection. This provision does not exist in the Senate-passed bill. If the final bill includes such a provision, it should be modified to incentivize timely departmental inspections of E&S control measures and prevent undue delays in the commencement of drilling operations. The amendments should require the operator to notify the department no later than 72 hours before the installation of E&S control measures will be completed and give the department an additional 72 hours to conduct the inspection. If the department is unable to inspect the site within three days after the control measures are installed, the operator would be permitted to commence drilling the well.